IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2535 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)

Versus

DAMUJI GOBARJI RAJPUT - Respondent(s)

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Appearance :

MR IM PANDYA AGP for Petitioner(s) : 1,
MR MUKESH H RATHOD for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 06/02/2006

ORAL JUDGMENT

1.This petition is directed against the order of the Labour Court, Kalol in Reference (LCK) No.222 of 1999, dated 21-3-2001, whereby the Labour Court has directed the

petitioner to take the respondent back in the employment at his original post without back wages.

2.Brief facts of the case are such that the respondent was working as Rojamdar watchman. That the services of the respondent were terminated by way of victimization as the respondent has asked for benefits under the Government Resolution dated 17-10-88. The respondent therefore raised an industrial dispute. The said industrial dispute was referred to Labour Court, Kalol which passed the above award.

3.Learned counsel for the petitioner has submitted that the petitioner is not an industry.

4.The contention that the irrigation depaArtment is not an industry will not survive in view of the Full Bench Decision of this Court in the case of Gujarat F.P.G.

& F.W. Union Vs. State of Gujarat, reported in 2004(2) GLH, 302, whrein it is held as under.

> “29.1 The question whether the Department of Government is industry within the meaning of Section 2(j) of the Act is, therefore, in our opinion, a mixed question of law and facts and it cannot be allowed to be raised for the first time before this Court, if it is not raised before the industrial forum, from which, such proceedings before this Court arise. The question No.3 referred in Special Civil application No.4715 of 2003 and 4435 of 2001 is answered accordingly”

Even otherwise, I am in complete agreement with the award passed by the Labour Court.

5. In the premises aforesaid, the petition is dismissed. Rule discharged. No order as to costs. The petitioner shall reinstate the respondent on his original post along with continuity of service within one month from

today.

(K.S.JHAVERI,J.)

*mithabhai